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File No. Agri Produce M II/41

Legal **DEPARTMENT**

B **BRANCH**

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Subject:—

The Bombay Agricultural Produce Mark Act 1939. Rules and notifications unde

File No. Agri Produce Mark II/41

Std. Sectt. Slip 24 B e.

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L.D.R.J No 2604
18-3-41

Office of the R.L.A.

Revised draft nitifications are sent herewith.

2. The amendment suggested by the Revenue Department, is pencil on page 29 is not in order. The principle in such cases is that a delegated authority cannot be redelegated: delegate protestes non potest delegari (Broom's Legal Maxims page 521 5701. The further delegation by the Collector of the powers of the provincal Government delegated to him would not therefore legally be in order. It will be necessary to specify in the notification all the officers to whom it is proposed to delegate the powers of the provincial Govertment under section 4(2) of the Act.

O.C.

for Remembrance of legal Affair

U.R. to R.D. No. 2729, dated the 25th March 1941.

Sd. / 25-3

Notification

Revenue Department,

Bombay Castle, 1941.

No. .- In exercise of the powers conferred by section 29 of the Bombay Agricultural Produce Markets Act, 1929 (Bom. XXII the Govertment of Bombay is pleased to amend it em No. VI of agricultural produce specified in the Schedule to the said Act, as follows, namely:-

The Bombay Agricultural produce market Act, 1939

For the said item No. VI the following shall be substituted, namely:-

"VI, Gul, sugar and sugarcane."

By order of the Governor of Bombay,

Secretary to Government.

The draft Rules (pages 1 to 163 copy marked slip D) as amended are in order.

2. Rule 2(xvi) : There is no objection to deleting the word. or .asageneral commission a ent" ad ptopodrf. Please see rule 8 II (b). The expression "traders" in this rule will not include general commission agents. It is presumed that this is the intention.

3. Rule 6(3) : The rule has been amended on the lines of the provision in section 8(d) of the Bombay Village Punchayats Act, 1933.

4. Rule 6 (5) : The expression "moral turpitude" though it is used in section 16(1)(b) of the city of Bombay Municipal Act, 1888, has not been judicially interpreted (See R.L.A. 's opinion No. 1467 dated the 7the February 1940). The addition suggested by A(F) (p.11 ante) is suitable and the rule has been suitably amended.

5. Rules 14 to 19: It is presued that the person to be authorised for the purposes of these rules will be the same person who is authorised for the purposes of rule 13. These rules have been amended accordingly. Consequential amendment has been made in rule 17.

6. Rule 36 : The protion to this rule asit stands states inter alia that a person representing a co-operative society shall be debarred from continuing to be such member if he ~~cannot~~ ceases to be a member of the co-oparative society of which he was the representative. It isproposed to amend the proviso by substitution of the words "Co-operative multipurpose or sale society" for the words " co-ope rative ~~multipurpose~~ society" where ever they occur. The effect of this amendment would be to restrict the operation of the proviso to co-operative multipurpose or sale societies only. It is not clear whether there will not be other ki kinds of co-operative societies entitled to elect representatives o the market committee. If there will be such other kinds of societi the amendment will not be suitable. R.D. may consider this point.

It may be pointed out th t Rule 9(2) of therules refers to every co-operative society and not every co-operative multipurpose or sale society.

7. Rule 27 : Asit is provided in the rules that the sunctions in connection with the election under rules 12 to 20 may be exercised either by the collector or by any person authorised in this behalf it is desirable that this rule should be amended by insertion of the words "or the persons authorised by him under rule 13" after the word "Collector" in the rule. The necessary amendment is carried out i.. the rule.

8. Rule 30(2) ; It appears desirable to include in this rule a provision on the lines of ru e 28(1) providing for the Collector or a person authorised by the calling the meeting for election of the Chairman and for the Collector or such person prediding at such meeting. The rule has been amended accordingly.

9. Rule 32(1) : The rule has be... ..itably amended from the drafting point of view.

10. Rules 46 and 50 have been revised from the drarting point of view.

11. Rule 65(3) and rule 67(3) : The word "shall" has been feplaced by the word "may" as it is presumed that it is not intended to make it obligatory on a market committee to gra nt license in every case.

12. Rule 66 : The rule has been amended from the drafting point of view. The provisions of sub-rule (3) ha ve been added in the form of a proviso to sub-rule (1).

13. Rule 78 : The provision contained in the last sent ence is sub-rule (2) applies also in cases under sub-rule (3). A new subrule conbaining this provision has therefore been add

14. Revised rules 78 (2), 79 and 80 : These rules have been amended from the drafting point of view. Attention is requested to the definition of the expression "authorised weig measures or weighing or measuring instruments" in rule 2(ii) of the rules.

15. Rule 85 : sub-rule (1) has been split up into t sub-rules. Sub-section (2) of section 12 of the Act prov that an appeal shall lie within the time prascribed from t decision under sub-section (1) to the Provincial Govertment or officer as the Provisional Govertment ma y appoint in this baha. Section 26 (2) (i) empowers Government to make rules to provide for the time within which an appeal shall lie to the Provincial Govertment or the officer appointed by it in that behalf. Rule 85(4) of the rules provies that the appeal shall lie within the time of thirty days to the Director of Industries or any office appointed by him in that behalf. There is no objection to pro vidubg that the appeal shall lie to the Director of Industries. But it would not be in order to provide that the appeal shall to an officer appointed by him in that behalf. Such a provisi would have the effect of delegating the power of Government to appoint the officer under sub-section (2) of section 12 to the Director. The words "or any officer apponted by him in this behalf" have, therefore , been deleted from this rule.

Sd. /29-5

Remembrance of legal Affairs.

U.R. to R.D. No. 4941 dated the 20th May 1941.

Office of the R.L.A.

Revised draft rules and forms are sent herewith. R.D. should varify whether the rules as revised carry out the intention.

2. Rule 4. .- Under section 5(a) it is obligatory on the Inspector to give a notice before entering upon an land or premises. The provision in R.D. draft rule 4 tha the notice may be dispensed with, if the ownder or occupi gives his consent is ultra vires and has therefore been omitted.

3. In order that the occupier may fully understand the notice given to him, it is necessary to amplify the forms,. This has been done in the revised draft.

4. The power to make rules under section 17 is subject to the condition of previous publication under subsection (3) of that section. The requisite draft is appended.

5. Secretary R.D.'s note on page 33 .- If R.D. consider it necessary, the following may be inserted as rule 9 :-

"9. When an appeal is preferred under sub-section (5) of section 11, the Collector shall, after giving the occupier and the Inspector an opportunity of being heard, consult the Deputy Derector of Agriculture having jurisdiction inthe district before passing orders on the appeal.

O.Q. Sd. 18/10
Remembrancer of Legal Affairs.

U.R. to R.D. No. 341-1 dated the 18th October 1941.

Notification

Revenue Department

Bombay Castle.

The following draft of a notificati which it is proposed to issue under sect 17 of the Bombay Agricultural Pests and Diseases Act, 1941 (Bom. XIV of 1941). is published as required by sub-section (3) of the said section 17 for the info mation of all persons likely to be affected thereby and notice is hereby given that the said draft will be take into consideration by the Goverment of Bombay on or after

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2. Any objectionsxx or suggestions wh which may be received by the Secretary t the Govertment of Bombay in the Revenue Department with respect to the said draf before the aforesaid date will be consi red by Government

Draft Modification

In exercise of the powers conferred by Section 17 of the Bombay Agricultural Posts and Diseases Act, 1941 (Bom.XIV of 1941), and all other powers enablin it in this beha lf the Government of Bombay is pleased to make the following rules :

1. Short title.- These rules may be called the Bombay Agricultural Pests and Diseases Rules, 1941.

2. Definitions.- In these rules, unless there is anything repugnant in the subject or context--

(a) "Act" means the Bombay Agricul

tural pests and Deseases Act, 1941;

(b) "Form" means a form appended to these rules;

(c) "Section means a section of the Act;

(d) Words and expressions used but not defined in the rules shall have the meanings assigned to them in the Act.

Manner of Publication of a notification under section 3.- When a notification declaring any post, plant disease or noxious weed under section 3 has been published in the Official Gazette, the Collector shall cause to be affixed copies of such nitification, in the reginnal language of the local area or areas concerned , at his office the office of the Mamlatdar of the Taluka or the Mahalkari of the Petha concerned and at the Chavde or other conspicuous place in the villages concerned. He shall also cause such notification to be proclaimed in such villages by beat of drum or by such other means as may be considered suitable by him. He shall further within on e month of the issue of the Notification under section 3, cause the substance of the notification to be published in the regional language of the local area in at least four issues of one of the daily newspapers published or having circulation in the district.

4. Manner of giving notice under section 5.- Three days previous to entering upon any land or premises under section 5, the Inspector shall give writte

notice in form I or his intention to do so to the occupier of such or premises. If the occupier resides onthe land or the premises the notice whall be served on him personally. If the occupier does not reside on the land or premises the notice shall be sent by post under a certificate of posting, if the occupier's adress is not known to the Inspector, it shall be affixed on some conspicuous part of the land or premises.

5. Form of notice to carry out preventive or remedial measures.- The notice under sub-section (1) of section shall be in form II.

6. Form of notice regarding the destruction of trees or plants and their estimated value.- The notice under sub-section (1) of section 8 shall be in Form III.

7. Manner of making of an enquiry under sub-section (1) of section 11. On receipt of a claim under section 10, the Assessor shall make an enquiry on the site in the presence of the local Agricultural Officer and two local cultivators, other than the claimant, selected by him. The Assessor shall consult such officer and cultivators in all matters pertaining to the enquiry.

8. Mode of determining the value of trees and plants for the purposes of the Act.

The value of trees and plants destroyed under the provisions of the Act shall

be determined by the Assessor after consultation with the local Agricultural Officer and the two local cultivators selected by him under rule 7.

Form I.

(See Rule

Form of notice under section 5 of the Bombay Agricultural Pests and Diseases Act, 1941.

To,

(Here enter name of occupier and his address).

Whereas in Government Notification, Revenue Department No..... dated..... issued under section 3 of the Bombay Agricultural Pests and Diseases Act, 1941. Government has -

(a) declared that the pest / disease / weed known as..... is an insect pest / plant disease / noxious weed,

(b) specified the following area as the local area within which the said declaration shall remain in force during the period from.....to .....; and

(c) directed the carrying out of the following preventive or remedial measures;

And Whereas it appears that the said insect pest / plant disease / noxious weed has appeared on crops / plants / trees in survey No. ..... of.....village, taluka....., district... ...., in your occupation;

Now, therefore, I hereby give you notice that I propose to visit the said land/premises at.....O'clock for

purpose of ascertaining

(1) whether there is any

Noxious

pest
disease
weed

on such land or premises, and

(ii) whether the preventive or remedial measures directed by Government have been carried out.

Inspector.

Dated the

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Form II.

(See Rule 5.)

Form of notice under sub-section of section 6 of the Bombay Agricultura_ Pests and Diseases Act, 1941.

To

(Here enter name of occupier and His address.

Whereas in Government Notification, Revenue Department No. ..... dated..... issued under section 3 of the Bombay Agricultural Pests and diseases Act, 1941, Government has-

(a) declared that the pest / disease / weed ..... known as..... is an insect pest / plant disease / noxious weed

(b) specified the following area a the local area within which the said dec aration shall remain in force during th period from.....to.....; and

(c) directed the carrying out of the following preventive or remedial measures;

and Whereas, on inspection mad under section 5 of the said Act of the crops / plants / trees in survey No. .....of..... village, taluka.....,district..... .....in your occupation, it ha s been found that the said insect pest / plant diseases / noxious weed asappeared on the said crops / plants / trees;

And whereas it appears that no preventive or remedial measures direc'

by Government have been taken by you

to eradicate the said pest or to
disease
weed

prevent its introduction, spread or reappearance.

Now therefore I hereby by this notice call upon you to carry out the aforesaid preventive or remedial measures within..... days of this notice

Inspector.

dated the

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Form III.

(see rule 6)

Form of notice under sub-section (1
of section 8 of the Bombay Agricultural
Pests and Diseases Act, 1941.

To

(Here enter name of occupier and
his address).

I hereby give you notice that,
in carrying out the preventive or
remedial measures under sub-section (a)
of section 7 of the Bombay Agricultural
Pests and Diseases Act, 1941, the trees
plants
situated in survey No..... of
....., village, taluka.....
district..... in your occupation,
the particulars and the estimated value
of which are given in the Schedule below
were destroyed.

You are, therefore, submit to
the assessor your claim for compensation
under sub-section (2) of section 8 of t
said Act within one month the date
of this notice.

Schedule.

Particulars of trees or plants destroyed	Estimated value
1.	2.

dated the Inspector.

Office of the R.L.A.

A revised draft notification is sent herewith.

2. The new clause (2) of rule 8-III in the draft notificatio as worded by the R.L. provides that in a case where the market area is within the limits of more than one local authority, each local authority shall elect three voters who shall be qualified to vote for election of a representative of such legal authoriti on the market committees. The existing rule 9(1) of the rules provides that every organisation of agriculturists and every loc authority selecting a person quaified to vote under rule 8-III(b shall report the names of its members qualified to vote to the Collector on or before the date fixed in this behalf by the Collector. It appears that the intention is that the voters to selected by any local authority for the purpose of electing the representation of the local authorities should be councillors or members of the local authority and no other persons. Clause (1) of rule 8-III has therefore been suitably amended to make the intention clear.

O.C. 25/11

Remembrancer of Legal affairs.

U.O. to R.D. No.10149 dated the 25th November 1941

Notification

Revenue Department

Bombay Castle November 1941.

No.991/33,- The following draft o: a notification which it is proposed to issue under section 26 of the Bombay Agi cultural Produce Markets Act, 1939 (Bo: XXII of 1939), is published as require by sub-section (4) of the said section 26, for the information of all persons likely to be affect ed thereby and notice is here y given that the said dr will be taken into consideration by the Government of Bombay on or after—— 19

2. Any objection or suggestion which may be received by the secretary to the Government of Bombay in the Revenue Department, from any person with respect to the said draft on or before t aforesaid date will be considered by Government.

Draft Notification.

No. - In exercise the powers conferred by section 26 of th Bombay Agricultural Produce Markets Act, 1939 (Bom. XXII of 1939), the Government of Bombay is pleased to amend the Bombay Agricultural Produce Markets Rules, 194 published in Government Notification in the Revenue Department, No. 991/33, dated the 28th June 1941. as follows, namely:-

In the said rules-

(1) for rule 8-III(b) the following hall be substituted:-

"In a case where the market area s within the limits of more than one

local authority, each local authority shall select three persons from among the councillors or the members of such local authority and the persons so selected shall be qualified to vote for election of a representative of such local authorities on the market committee,";

(2) in sub-rule (1) of rule 9 -

(a) for the words " a person the words "the persons" shall be substituted and

(b) for the words "its members" the words "the persons" shall be substituted and

(3) after rule 21 the following new rule shall be inserted namely:-

"21A. Procedure at election when equality of votes exists.- If, when a poll has been taken at an election, an equality of votes is found to exist between any candidates, and the addition of one vote will entitle any of the candidates to be declared elected, one additional vote shall be given by the Collector or the person authorised by him in this behalf to the candidate or as the case may be the candidates, selected by lot drawn in the presence of the Collector or the person authorised by him in such manner as the Collector or such person may determine. "

By order and in the name of the Governor of Bombay,

Secretary to Government.

Notification

Revenue Department

Bombay Castle November 1941

No. 6522/33.- In exercise of the powers conferred by rule 51 (a) of the Bombay Agricultural Produce Markets Rules 1941, and in modification of Government Notification No. 6522/33, dated 4th December 1937, the Government of Bombay are pleased to declare the following area to be part of the market area of the Dondaicha market in the Sindkheda taluka of the West Khandesh destrict as a market yard.

(1) Market Yard. - The market yard shall be part of survey No. 319 of Dondaicha measuring 4 acres and 24 gunthas.

(2) The boundaries of the market yard shall be as follows:-

North - Dondaicha railway station limits.

East - Part of survey 10,319 and portion of Nandurba r Dhulia Road.

South-Nandurbar-Dhulia Road.

West - Survey No. 316.

By order of the Governor of Bombay,

H.V.R. Iangar,

Secretary to Government

NBK18/11

Office of the R.L.

Section 31 of the Bombay Agricultural Produce Markets Act, 1939 repeals the Bombay Cotton Markets Act, 1927 but the proviso to the said section 31, inter alia provides that any local area declared to be a cotton market under section 4 of the Bombay Cotton Markets Act, 1927 shall be deemed to be a market area under the Bombay Agricultural Produce Market Act, 1939 (section 4). Therefore, the area declared to be a Cotton Market (page 87) at Dondaicha in the Sindkheda taluka of the West Khandesh Dastrict, continues to be the market area under section 4 of the Bombay Agricultural Produce Markets Act, 1939. Any change in this market area can only be effected in the manner prescribed by sub-section 4) of section 4 of the said Act.

Rule 51(a) read with rule 2(vii) of the Bombay Agricultural Produce Markets Rules 1941, gives authority to the Government of Bombay to declare a market yard in any market area. As stated by the Collector of West Khandesh in para.2 of his letter to the Commissioner, Central Division, No.M.S.C./275 dated 11-9-1941 (pages 98-99), the part of S.No.319 measuring 4 acres and 24 gunt which is proposed as the site of the New Market Yard, falls, within the limits of the Old Cotton Market area at Dondaicha and therefore there would ordinarily be no legal objection to declaring this area to be a market yard in place of the old one under rule 51(a) of the Bombay Agricultural Produce Markets Rules, 1941. But in this case, as observed by the Collector of West Khandesh in para. 2 of his letter to the Commissioner, Central Division No. M.S.C./275 dated 11-9-1941, the effect of the proposed change of the Market Yard site would be that the original market area as defined with reference in the MarketYard in S. No. 329-A, would be altered. In this view, the draft notification on page 108 would not be legally inorder as it affects the present market area at Dondaicha. It is however possible to argue that the areas of the market proper and the market-approaches having

ben described in Notification No.6522/33 dated 4-12-1937 (page57) with reference to the market yard as specified there in, the proposed change of the site of the market yard would not affect the market area already fixed. The question in therefore not entirely free from doubt but I consider that the fir st view that the notification is not legally in order inthe better o one.

27/11

Remembrance of legal Affairs.

U.M. to R.D. No. 10210 dated the 27th November 1941.